FILED'10 DEC 8 13:18USDC-ORM

Denise & Kenneth Cook
300 Newt Gulch Road
Wilderville OR 97543

UNITED STATES DISTRICT COURT

District Of Oregon

Denise & Kenneth **Cook** Plaintiff, vs. **HSBC Beneficial** Defendant	Case # 1:10CV3121-PA **PETITION FOR NO ANSWER DEFAULT** Date: 12/08/2010

PARTIES

PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT

Plaintiff asks the court clerk to enter a default against defendant, as authorized by Federal Rule of Civil Procedure 55.

A. Introduction

1. Plaintiff is: Denise & Kenneth Cook , 300 Newt Gulch Road Wilderville OR 97543, and defendant is: Beneficial Oregon, Inc. ,

2. On 11/04/2010 plaintiff sued defendant for breach of fiduciary duty, fraud, fraud by nondisclosure, and violations of various consumer protection laws.

3. On 11/04/2010 , plaintiff filed with the court an ORIGINAL COMPLAINT. On 11/16/2010 defendant was served with a summons and a copy of plaintiff's complaint by and through Process server. A copy of the return of service is attached as Exhibit A. Defendant did not file a responsive pleading or otherwise defend the suit.

4. Plaintiff is entitled to entry of default.

B. Argument

5. The court clerk may enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see United States v. $23,000 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996); *United States v. 51 Pieces of Real Prop. Roswell, N.M.*, 17 F.3d 1306, 1314 (10th Cir. 1994).

6. The clerk should enter a default against defendant because defendant did not file an answer within 20 days after 11/16/2010 , the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i).

7. Plaintiff meets the procedural requirements for obtaining an entry of default from the clerk as demonstrated by {*Mark R. Cornwell*}'s sworn affidavit, attached as Exhibit A. Said affidavit establishes by sworn testimony of Plaintiff that Defendant failed to answer or otherwise defend the instant action within the 20 day time period allowed by law.

8. Defendant is not a minor or an incompetent person. *See* Fed. R. Civ. P. 55(b)(1).

9. Defendant is not in military service. *See* 50 U.S.C. app. §521(b)(2). An affidavit of defendant's military status is attached as Exhibit A.

10. Because defendant did not file a responsive pleading or otherwise defend the suit, defendant is not entitled to notice of entry of default. *Haw. Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 512 (9th Cir. 1986); *see* Fed. R. Civ. P. 55(a).

C. Conclusion

11. Plaintiff filed a suit against defendant in the court on the 04 day of December, 2010. Defendant failed to timely answer or otherwise defend said action and, thereby, Plaintiff is entitled to judgment against defendant is all things requested by Plaintiff in the suit. For these reasons, plaintiff asks the clerk to enter a default in favor of plaintiff.

Respectfully Submitted,

Denise & Kenneth Cook

Denise & Kenneth **Cook**

Denise Cook Kenneth Cook

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AFFIDAVIT OF SERVICE

123786

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PLAINTIFF(S):	**DENISE AND KENNETH COOK**
DEFENDANT(S):	**BENEFICAIL, HSBC MORT. CORP**

STATE OF NEW YORK
COUNTY OF ERIE ss.:

Mark R. Cornwell, the undersigned, being duly sworn, deposes and says that I was at the time of service over the age of eighteen and not a party to this action. I reside in the STATE OF NEW YORK.

On **11/16/2010** at **1:11 PM**, I served the within **CIVIL COVER SHEET; SUMMONS; ORIGINAL PETITION; PRELIMINARY INJUNCTION** on **BENEFICIAL, HSBC MORT. CORP** at **2929 WALDEN AVE, Depew, NY 14043** in the manner indicated below:

CORPORATE SERVICE: By delivering a true copy of each to **COURTNEY HOERNER, MORTGAGE RESEARCH SPECIALIST** of the above named corporation. The undersigned asked the recipient if he/she is authorized to accept service on behalf of **BENEFICIAL, HSBC MORT. CORP**, and the recipient responded in the affirmative.

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

Sex	Color of skin/race	Color of hair	Approx Age	Approx Height	Approx Weight
FEMALE	**WHITE**	**BROWN**	**20-34**	**5'0" - 5'3"**	**100-129Lbs.**
Other Features:					

Sworn to and subscribed before me on November 16, 20 10 by an affiant who is personally known to me or produced identification.

[signature]
NOTARY PUBLIC
My Commission Expires: __________

JENNIFER M. SMITH
Notary Public, State of New York
No. 01SM6164484
Qualified in Erie County
Commission Expires April 23, 2011

X [signature: Mark R Cornwell]
Mark R. Cornwell

North American Process Serving, LLC.
2801 Wehrle Drive
Williamsville,NY 14221
716.565.0258
Atty File#:

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VERIFICATION

I, Denise & Kenneth Cook , do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

Denise & Kenneth Cook
300 Newt Gulch Road
Wilderville OR 97543

C. Rosenberg

SWORN TO AND SUBSCRIBED BEFORE ME, ~~December 8, 2010~~, by Denise & Kenneth Cook on the 8th day of December, 2010, which witnesses my hand and seal of office.

NOTARY PUBLIC IN AND FOR THE STATE OF OREGON January 23, 2014

OFFICIAL SEAL
CANDY D ROSENBERG
NOTARY PUBLIC - OREGON
COMMISSION NO. 445341
MY COMMISSION EXPIRES JANUARY 23, 2014

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CERTIFICATE OF SERVICE

I, Denise & Kenneth Cook , do swear and affirm that I have served a signed copy of this Petition for No Answer Default, and Order for No Answer Default to any and all defendants by way of U.S.P.S. Certified mail # 7010 1670 0002 0328 7823 and return receipt.

Denise Cook Kenneth Cook

Denise & Kenneth Cook
300 Newt Gulch Road
Wilderville OR 97543

The Person(s) above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed ~~to~~ this document and acknowledged to me that he/she executed the same in ~~his~~ their authorized capacity and that by ~~his~~ their signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Rosenberg

January 23, 2014

NOTARY PUBLIC IN AND FOR THE STATE OF OREGON

Notary Seal

OFFICIAL SEAL
CANDY D ROSENBERG
NOTARY PUBLIC - OREGON
COMMISSION NO. 445341
MY COMMISSION EXPIRES JANUARY 23, 2014